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Urban Highways: The Problems of Route Location And a Proposed Solution

ALFRED C. AMAN, JR.*

INTRODUCTION

Cities from coast to coast are presently locked in controversy over the location and design of urban highways.¹ The lines of battle are clearly drawn. On one side are the State Highway Departments, suburbanites, the construction industry, the automotive and allied industries. They argue that highways are vital to the growth of the city and the public benefit they provide far surpasses the private injury that may necessarily result. Indeed, present traffic congestion and predictions for the future demand their immediate construction. On the other side are the conservationists, civil rights groups, architects and affected home-owners. They contend that while highways may benefit the commuting suburbanite, they often do so at the expense of park lands, stable neighborhoods, clean air, peace and quiet. Thus, in determining the "public benefit" they urge a broader view. The word "public" includes more than highway users; the word "benefit" encompasses more than economic factors.² As for present and future traffic congestion, they point to such alternatives as mass transportation,³ increased bus service,⁴ and the widening of existing streets.⁵

Those advocating this "broader view," however, have not been given a significant voice in the formal decision-making process. In

* A.B. 1967 University of Rochester; J.D. 1970 University of Chicago.

1. Christian Science Monitor, June 4, 1968, at 1; June 6, 1968, at 12; June 11, 1968, at 12 (San Francisco); June 13, 1968, at 13 (New Orleans); June 18, 1968, at 3 (Nashville); June 20, 1968, at 9 (Indianapolis); June 25, 1968, at 9 (Cleveland); June 27, 1968, at 12 (Los Angeles); July 2, 1968, at 3 (Chicago); July 9, 1968, at 9 (New York). Cf. *Fighting the Freeway*, NEWSWEEK, March 25, 1968, at 67; *Freeway Versus the City*, ARCHITECTURAL F., Jan., 1968, at 17; Dunhill, *Reconciling the Conflict of Highways and Cities*, REPORTER, Feb. 8, 1968, at 21-23; *Building Roads Without Disrupting the City*, BUSINESS WEEK, Nov. 18, 1967, at 108; *Expressway Named Destruction*, ARCHITECTURAL F., March, 1967, at 66; *Hard-Nosed Highwaymen Ride Again*, LIFE, April 14, 1967, at 69; *Lower Manhattan Expressway*, ARCHITECTURAL F., Sept., 1967, at 108; *Rising Furor Over Super Highways*, U.S. NEWS AND WORLD REPORT, Nov. 27, 1967, at 43; *War Over Urban Expressways*, BUSINESS WEEK, March 11, 1967, at 213; *Highway Men Come to Morristown*, SATURDAY EVENING POST, April 9, 1966, at 168. See generally, *Hearings on Urban Highway Planning, Location, and Design Before the Subcommittee on Roads of the Committee on Public Works*, 90th Cong., 1st Sess., pt. 1 (1967); *Hearings on Urban Highway Planning, Location, and Design*, 90th Cong., 1st and 2nd Sess., pt. 2 (1968).

2. *Id.*

3. See, e.g., MASS TRANSPORTATION (G. Smerk, ed. 1968).

4. See, e.g., H. BAIN, REVERSE-FLOW EXPRESS BUS SERVICE.

5. See *id.*

attempting to influence the ultimate route location decision, they have been forced to utilize such methods as protest demonstrations, disruptive hearings, counter plans, and court orders. The end result has been an "Anti-Freeway Revolt" which is, in reality, a manifestation of the inability of our route location process to coordinate and compromise the values, goals and competing interests of urban dwellers on the one hand, with those of the highway departments and suburbanites on the other.⁶

The 1968 Federal Aid Highway Act⁷ and the Policy and Procedure Memorandum (PPM)⁸ that followed attempt to resolve this problem by broadening the values highway planners must consider and increasing the amount of public participation in the planning process. To adequately examine the effectiveness of these changes, however, it is necessary to make explicit a basic assumption and to examine in detail the earlier decision-making process.

I

A. *Planning is a Political Process*

Planning in general, and the location of a highway in particular, is a political process.⁹ While the procedure may seem susceptible to scientific objectivity and a final determination by the "expert," not only the decision where to locate, but even the decision to build an urban highway is a political one in the broad sense of the term. It represents but one possible allocation of urban space. Whether it is the "best use" of this scarce commodity, and whether the kinds of benefits the community can realize from such a project are questions whose answers, like beauty, depend upon the individual perceptions of the beholders.¹⁰ Since, however, the interests of the urban dweller have not been adequately represented in most State Highway Departments, the wide range of goals, values and social choices that should come within the scope of urban highway planning have neither been recognized nor

6. Bridwell, *Remarks Before Pennsylvania Department of Highways Seminar*, February 28, 1968, Harrisburg, in HIGHWAY RESEARCH RECORD, No. 220, at 2 (1968).

7. 82 Stat. 815, 23 U.S.C. § 128(a) (1964).

8. Bureau of Public Roads, Policy and Procedure Memorandum 20-8, (Jan. 17, 1969).

9. See Reich, *The Law of the Planned Society*, 75 YALE L. REV. 1227, 1233-36 (1966); Plager & Handler, *The Politics of Planning for Urban Redevelopment: Strategies in the Manipulation of Public Law*, 1966 WIS. L. REV. 724-27; see generally, KAPLAN, *URBAN RENEWAL POLITICS* (1963); R. DAHL, *WHO GOVERNS?* (1961); ROSSI AND DENTLER, *THE POLITICS OF URBAN RENEWAL* (1961); MEYERSON AND BARFIELD, *POLITICS, PLANNING AND THE PUBLIC INTEREST* (paperback ed. 1964); Beckman, *Politics and Administration of Plan Implementation*, 102 HIGHWAY RESEARCH RECORD 1, 2 (1968).

10. Plager & Handler, *The Politics of Planning for Urban Redevelopment: Strategies In the Manipulation of Public Laws*, 1966 WIS. L. REV. 724, 726.

included.¹¹ When criticized, however, highway departments have often retreated behind the myth of acting in the "public interest."¹² Such a retreat is made quite easily when no explicit process exists for the democratic establishment of a hierarchy of goals and values. An examination of the prior decision-making process reveals such a situation.

B. *The Prior Decision-Making Process*

1. *Hearing procedures*—Since 1956, the advent of the Federal Interstate system,¹³ the public has had a voice in the route location process. The 1956 Federal Aid Highway Act^{13.1} required that there be a public hearing, or an opportunity afforded for one, prior to the time a state highway department could proceed with certain Federal Aid projects for the improvement or construction of previously selected routes.¹⁴ The objective of such a hearing was to provide the public with information concerning highway construction proposals and to afford every interested resident of the area an opportunity to be heard. In addition, the hearing was to furnish the State Highway Department with local information which could be of assistance in evaluating feasible alternative designs and locations.¹⁵

This hearing, however, was to occur before a specific route had been selected, but after the need for a highway had already been determined and a corridor had been mapped out.^{15.1} The public was

11. See, e.g., *Hearings on Urban Highway Planning, Location, and Design Before the Subcommittee On Roads of the Committee On Public Works*, 90th Cong., 1st Sess., Statement of John F. Shelly, Mayor of San Francisco, p. 135; Statement of Sam Yorty, Mayor of Los Angeles, p. 138-39; Statement of J.D. Braman, Mayor of Seattle, p. 145. See generally, *Nashville's Largest Black Neighborhood, Having Lost a Legal Battle, Tries To Make The Best Of A Divisive Highway*, CITY, Sept.-Oct. 1968, at 27, See contra, *Urban Highways*, pt. 1, Statement of John O. Morton, American Association of State Highway Officials at 163.

12. See generally, Reich, *The Law of the Planned Society*, 75 YALE L. REV. 1227, 1228-36 (1966).

13. The 1956 Federal Aid Highway Act represented an all-out national commitment to complete an Interstate Highway System. It proposed a 41,000-mile system to be completed by 1972 (since extended to 1974) which would like more than 90 per cent of all cities having populations of 50,000 or more. Of this mileage, approximately 6,500 miles were to be urban in character. To insure the success of this program, the federal government now financed 90 per cent of the highway's cost. To date, two-thirds of the system is completed with about 2000 urban miles yet to be built. See generally, Levin, *Federal Aspects of the Interstate Highway Program*, 38 NEB. L. REV. 337, 380-87 (1958); G. SMERK, *URBAN TRANSPORTATION: THE FEDERAL ROLE*, 132-33 (1965).

13.1. 70 Stat. 378 (1956).

14. For an excellent discussion of this requirement, see Note, *Pressures In the Process of Administrative Decision: A Study of Highway Location*, 108 U. PA. L. REV. 534, 569-75 (1960).

15. Bureau of Public Roads, Policy and Procedure Memorandum 20-8(1), § 2(c) (June 16, 1959).

15.1. The term "corridor" is utilized by highway planners to designate a broad channel or passage within which the more specific highway route is to be located.

thus precluded from not only the decision of whether or not to build a highway, but its general location as well. Furthermore, when the public could participate, the existing hearing procedures, often poorly spelled out, were readily subject to abuse. Inadequate notice,¹⁶ the untimely holding of the hearing,¹⁷ lack of available information,¹⁸ and the indifferent attitude of the officials in charge¹⁹ were common re-occurring deficiencies. Finally, even if these obstacles were surmounted, the statute itself required that only the "economic effects" of the route location be considered.²⁰ So vague a directive provided the highway departments with considerable discretion often resulting in an emphasis on the highway-user aspects of a proposed route location at the expense of such non-user factors as neighborhood stability and the preservation of park land.²¹ In short, the prior hearing procedures excluded effective

16. See, e.g., *Nashville I-40 Steering Committee v. Ellington*, 387 F.2d 179 (6th Cir. 1967), where notice concerning a route which was to pass through the heart of an all black business district was given—by supplying copies to the County Judge and Mayor and by posting copies in the main post office and five post office stations. These post offices, however, were described "as being in a 'white' neighborhood near the predominantly Negro community." Furthermore, "for some unexplained reason the notice announced the hearing for May 14, and it actually was held the following day, on May 15." Though the court considered this an unsatisfactory way to give notice of a public hearing, it pointed out that "neither the statute nor the regulations of the Bureau of Public Roads prescribed how notice of hearings should be given" and concluded that the project was so well publicized that no literate citizen of the Nashville community could have been unaware of the proposed route. Thus, it held the District Court did not abuse its discretion in failing to issue a preliminary injunction on the ground that no public hearing was held in compliance with Federal law. See also, Note, *Pressures In the Process of Administrative Decision: A Study of Highway Location*, 108 U. PA. L. REV. 534, 572 (1960).

17. The Senate Report to the 1968 Federal Aid Highway Act stated:

Based on an examination of the situation in nine urban areas, the average timespan between public hearings and the start of construction is about 8 years. S. REP. NO. 1340, 90th Cong. 2d Sess., 10 (1968).

The hearings were also untimely in the sense that they were usually held during the daytime. See Note, *Pressures In the Process of Administrative Decision: A Study of Highway Location*, 108 U. PA. L. REV. 534, 572 (1960).

18. Note, *Pressures In the Process of Administrative Decision: A Study of Highway Location*, 108 U. PA. L. REV. 534, 573 (1960).

19. *Id.*

20. The Statute provides:

Any highway department which submits plans for a Federal Aid Highway project involving the bypassing of, or going through any city, town or village . . . shall certify to the Commissioner of Public Roads that it has had public hearings or has afforded the opportunity for such hearings and has considered the economic effects of such a location. 23 U.S.C. § 128 (1964).

21. ". . . [A]lthough the Bureau of Public Roads has for years urged a concern for human and cultural values in highway location, in actual practice the choice is too often made on the basis of transportation needs and cost, with emphasis on the cost-benefit ratio which evaluates a highway primarily from the point of view of those who drive on it. . . ." THE FREEWAY IN THE CITY, 11 (1968).

Highway cost-benefit analysis to date has been largely limited to identification of savings in money and time to the present highway users in the area, including vehicle

public participation and contributed to the inordinate amount of power possessed by State Highway Departments.

2. *Governmental Decision-Makers*—As stated above, highway planning is a political process in the sense that the decisions made involve judgments about values and probabilities. The process, however, is political in another, more narrow, sense. The proponents of a highway must gain the consent of certain governmental decision-makers on the federal, state, regional and local levels.²² Since those opposing the highway could conceivably defeat the project by persuading the proper officials to deny the necessary support, it is to the advantage of highway proponents if these decision-makers are not only sympathetic to their point of view, but able to exercise their power with a minimum of publicity and debate. The prior law facilitated the existence of both these conditions. For example, the fact that the highway corridor was determined without any public participation meant that a significant portion of the planning was already completed and accepted before any possible opponents were involved in the decision-making process. Furthermore, an examination of the decision-makers whose consent highway proponents were dependent upon reveals a group already sympathetic to their goals.

On the Federal level, the decision-making power rests with the Secretary of Transportation and the Bureau of Public Roads.²³

operating costs reductions, fewer accidents and reduced travel time, and increased economic activity due to improved access to particular locations.

These efforts can perhaps be criticized as primarily limiting their attention to the direct benefits to road users. Transportation development in metropolitan areas inevitably involves costs and benefits not only for road users in the area, but also by the individual jurisdictions and other interest groups in the area. Beckman, *Politics and Administration of Plan Implementation*, 102 HIGHWAY RESEARCH RECORD 1, 3 (1968).

22. Plager and Handler, *The Politics of Planning for Urban Redevelopment: Strategies In the Manipulation of Public Law*, 1966 WIS. L. REV. 724, 726.

23. The Secretary of Transportation administers the Federal Aid program through the Bureau of Public Roads which is a component of the Federal Highway Administration which in turn is part of the Department of Transportation. Section 109(a) of Title 23 enables the Secretary to withhold approval of—

plans and specifications on proposed projects on any Federal-Aid systems if they fail to provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

Furthermore, § 138 of Title 23 provides:

. . . the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes

However, though the federal government finances 90 per cent of the cost of an interstate highway, the planning construction and maintenance of highways is strictly a state responsibility.²⁴ Consequently, the federal interest is limited only to a veto power to insure adequate standards are achieved.²⁵ Thus, in theory at least, the federal government does not engage in planning the location of a highway. However, the existence of such substantial financial assistance coupled with a veto power provides an opportunity for the federal government to exert considerable influence. Due to the fact that the planning orientation of the Bureau of Public Roads was and continues to be remarkably similar to that of the State Highway Departments themselves, there has been a minimum of disagreement concerning highway route location and construction. Indeed, during the recent Department of Transportation hearings concerning proposed new regulations, the relationship between the Bureau and the highway departments was, on numerous occasions, described as a "beautiful partnership."²⁶ Furthermore, even though the Secretary can override the approval of the Bureau, he is not likely to do so. The strong state interest and long history of state control of the highway program makes such direct federal intervention highly unlikely.²⁷

On the state level, the State Highway Departments are virtually in complete control. They must, of course, adhere to their own state laws in planning and constructing the highway as well as depend upon the State Legislature for the necessary appropriations.²⁸ These,

all possible planning to minimize harm to such parks, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

Section 4(f) of the Department of Transportation Act (80 Stat. 931) has been amended to read the same as Title 23, § 138.

24. The States take the initiative in the highway program. They choose the systems of routes for development, select and plan the individual projects to be built each year, acquire the rights-of-way, and supervise the construction contracts. . . . BUREAU OF PUBLIC ROADS, HIGHWAYS AND HUMAN VALUES 39, 40 (Report for Fiscal Year 1966), *cited in* D. MANDELKER, A SUPPLEMENT TO MANAGING OUR URBAN ENVIRONMENT, 4 (1968). *See also*, ADVANCE ACQUISITION OF HIGHWAY RIGHTS-OF-WAY STUDY, 90th Cong., 1st Sess. 26 (Comm. Print 1967).

25. D. MANDELKER, A SUPPLEMENT TO MANAGING OUR URBAN ENVIRONMENT 2 (1968).

26. *See, e.g.*, Dep't of Transportation, *Comment on Highway Locations* (Dec. 1968), Statement of T.H. Bonard, Deputy Director of Right-of-Way, Ohio Dept. of Highways, 722, 725; Statement of Charles W. Speight, 947; S.N. Pearman, p. 514-15. Ross J. Stapp, AASHO 347 at p. 348.

27. The most recent direct intervention of the Secretary has been in Washington, D.C. There, he withheld approval of the Three Sisters Bridge. *See* Washington Post, Nov. 8, 1967. However, in addition to his statutory power, the Secretary's familiarity with the Washington situation as well as the unusually strong federal interest in the Nation's Capitol provided ample authority for his intervention.

28. Every court that has considered the applicability of state laws to federal-aid highways being constructed by the states has taken the view that the state laws must be obeyed. *See, e.g.*, *Futch v. Greer*, 353 S.W. 2d 896, 899-900 (Tex. Civ. App. 1962), *cert. denied*, 372 U.S. 913 (1963); *cf. Hinrichs v. Iowa State Highway Comm'n*, 260 Iowa 1115 152 N.W. 2d 248, 253-55;

however, are hardly significant checks. State legislation generally leaves the final decision-making power with the highway departments themselves. Furthermore, it is highly unlikely that a State Legislature will not appropriate the necessary funds for what most consider needed roads that are subsidized up to 90 per cent of their cost.

On the regional level, the 1962 Federal Aid Highway Act²⁹ declared that as a requirement for federal aid interstate projects in urban areas with populations of more than 50,000 be based on a continuous, comprehensive transportation planning process.³⁰ To implement this provision, a written memorandum of understanding between the State Highway Departments and the governing bodies of the affected local communities has been utilized.³¹ The purpose of the statutory provision and the written memo is to enable the transportation planning process to be carried out "in a manner that will insure that the planning decisions are reflective of and responsive to both the programs of the State Highway Department and the needs and desire of the local communities."³² While it is conceivable that these communities could refuse to agree with the highway departments, it is most unlikely. In determining, first, whether or not to build a highway and, secondly, its exact location from a regional point of view, it is the interests of the suburbanites, not those of the urban dweller, that will tend to dominate. Thus, the hope of speedier access to the downtown area provided free of charge tends to make the construction of the highway virtually inevitable and its exact alignment, upon reaching the urban center, relatively unimportant.

On the local level, municipal consent is specifically required before a highway can be built in about half of the states.³³ Yet, even where a local governing body has the power to veto a proposed route, it is unlikely it will be utilized. A highway normally affects but a relatively small portion of the local electorate. Thus, in an auto-dominated society, the hope of relieving traffic congestion, free of charge, is most

State Highway Comm'n v. Yost Farm Co. 142 Mont. 239, 384 P.2d 277. Some states have explicitly amended their preexisting state laws so as to make it easier for them to meet the Federal administrative standards and thus obtain the maximum federal-aid reimbursements available. See, e.g., VA. CODE ANN. § 33-130 (1953). See generally, Brown, *Reservation and Street Rights-of-Way by Official Maps*, 66 W. VA. L. REV. 73, 83 n. 34, 87-90 (1964); Levin, *Federal Aspects of the Interstate Highway Program*, 38 NEB. L. REV. 377, 403-05 (1958); Tippy, *Review of Route Selections for the Federal-Aid Highway Systems*, 27 MONT. L. REV. 131 (1966); Note, 108 U. PA. L. REV. 534, 577-78 (1960).

29. 76 Stat. 1148.

30. 23 U.S.C. § 134 (1964).

31. D. MANDELKER, A SUPPLEMENT TO MANAGING OUR URBAN ENVIRONMENT 6 (1968).

32. Bureau of Public Roads, Instructional Memorandum No. 50-2-63 at 4 (March 27, 1963).

33. MANDELKER, *supra* note 31, at 5.

appealing to all but those councilmen who represent the affected districts.³⁴

In short, the government officials who have the power to veto the decisions of State Highway Departments generally defer to their judgment. While this may represent either their own value preferences or the majority view of their respective constituencies, the fact remains that significant minority interests and values are thereby effectively excluded from the formal decision-making process. Thus, those advocating these views have attempted to assert their influence by utilizing methods completely outside the formal system.

C. *Extra-System Methods*

Various devices for influencing the decision-making process have been used. One approach is to attempt to enjoin, as illegal, the entire decision-making process itself. Other approaches, such as the Saul Alinsky method or the rational counter plan, attempt to influence the ultimate outcome of the process.

1. *The Courts*—As one author has observed: "Courts are reluctant to enter into areas of engineering technology and political questions."³⁵ However, courts may at times be willing to entertain issues concerning the procedure by which highways are built. As stated above, besides the federal law, State Highway departments must also conform to their own state and local laws. Within these separate legal frameworks, enjoined violations may occur.

In *D.C. Federation of Civil Associations, Inc. v. Thomas F. Aires*,³⁶ the plaintiffs brought suit to enjoin the construction of four District of Columbia Highway Department projects.³⁷ The plaintiffs argued that the planning and construction of highway projects in the District must proceed according to the requirements of Title 7 of the District of Columbia Code.³⁸ These specific procedures promulgated as far back as 1893 included the drawing of detailed maps,³⁹ holding hearings⁴⁰ in addition to those prescribed by the federal law as well as

34. San Francisco, however, is a notable exception. A local statute requires the highway commission to negotiate an agreement with the city council or county supervisors to close off local streets for freeway construction. CAL. STREETS AND H'WAYS CODE § 100.2 (1965). To stop the Embarcadero Freeway and to preserve the view of San Francisco Bay, the Board of Supervisors refused to close off any streets.

35. Tippy, *Review of Route Selections for the Federal Aid Highway Systems*, MONT. L. REV. 131, 139 (1966).

36. 391 F.2d 478 (D.C. Cir. 1968).

37. The four projects were: (1) The North Central Freeway (2) The East Leg (3) The Missouri Avenue Expressway (4) The Three Sisters Bridge.

38. 27 Stat. 532. D.C. CODE § 37-108 *et seq.* (1961).

39. D.C. CODE § 7-109 (1961).

40. D.C. CODE § 7-115 (1961).

maximum and minimum width limitations of the highway itself.⁴¹ It was argued that none of these local requirements were adhered to by the District in their Interstate Highway construction activities. The Court, on appeal, reversed a lower court decision and ruled that the only power the District had to build roads was that granted by the provisions of Title 7. Since these procedures had not been followed, the Court enjoined as illegal all four challenged projects.

A decision of this type, however, is not very common. In reality, it represents an instance in which the court makes a substantive, policy decision under the guise of a procedural ruling. Indeed, the over-all effect and significance of this case was that it stopped a most unpopular freeway program.⁴² In general, it can still be safely assumed that, as in the words of the lower court:

[T]he wisdom, the policy, the expediency and the desirability of governmental action, be it action of Congress or action of the Executive, are not subject to review by the judiciary. . . . Were the judiciary to be superior to the other branches of the government and were the judiciary clothed with the power to set aside governmental action with which it did not agree or which it did not approve, we would cease to have a popular form of government.⁴³

Yet, despite the fact that a court victory would be unusual, simply getting into court represents an important delaying tactic on the part of the anti-freeway forces. Indeed, it provides at least some time to organize significant community support for their position thereby bringing pressure to bear on the appropriate governmental decision-makers. Furthermore, it may provide an opportunity to develop and publicize an effective counter proposal.

2. *The Saul Alinsky Approach*—One approach utilized in gaining community support for the opponent's position may be termed the Saul Alinsky method.⁴⁴ Working from the premise that the

41. D.C. CODE § 7-108 (1961).

42. The reaction to this decision was so intense that Congress attempted to overrule the court's decision. § 123 of the 1968 Federal Aid Highway Act stated:

Notwithstanding any other provision of law, or any court decision or administrative action to the contrary the Secretary of Transportation and the government of the District of Columbia shall . . . construct all routes on the Interstate System within the District of Columbia . . . Such construction shall be undertaken as soon as possible after the date of enactment of this Act . . . and shall be carried out in accordance with all applicable provisions of Title 23 of U.S. Code.

The Act further provided that the District was to "commence work" on four specific projects, one of which was the Three Sisters Bridge, as well as giving further study to the North Central Freeway.

43. 275 F. Supp. 533.

44. See generally, S. ALINSKY, *REVEILLE FOR RADICALS* (1945).

community in general and the decision-makers in particular will never pay any attention to their plight unless they make themselves obnoxious, they adopt an uncompromising position and assert it in as abrasive and disruptive manner as possible.⁴⁵ Positive alternatives are never presented. Indeed, the fact that neither solution nor compromise is possible makes such an approach more effective as a stimulus to community organization. Drama, publicity and the importance of the issue are thereby increased. To inflate it even more, there is often an attempt to link the planning issue with a much broader social issue, such as, for example, racism.⁴⁶

In the recent highway controversy in Washington, D.C., one of the proposed routes, the North Central Freeway, was slated to run through a low to medium income, integrated neighborhood displacing approximately 370 residents.⁴⁷ A loosely knit but militant cross-section of civil associations and ministers formed the Emergency Committee on the Transportation Crisis.⁴⁸ Adamantly opposed to the planned freeway, they labeled the intended route "a white man's road through a black man's bedroom"⁴⁹ and dogmatically asserted their uncompromising position: "Freeways, no! Subways, yes!"⁵⁰ Their president was a black power militant, and they used disruptive tactics to dramatize not only the highway issue, but the race issue as well at various hearings and City Council meetings.⁵¹

It is difficult to assess the effectiveness of such a group. Certainly, the method dramatizes the plight of the affected home-owners as well as threatens to destroy any general consensus highway planners and governmental decision-makers may hope to enjoy. Yet, this result is not without cost. By putting a premium on conflict and strife, such a method "may create so much antipathetic reaction that it carries the seeds of its own destruction in the form of a fierce response from the

45. Babcock & Bosselman, *Citizen Participation: A Suburban Suggestion for the Central City*, 32 LAW & CONTEMP. PROB. 220 (1967).

46. See, e.g., Statement of R.H. Booker, Chairman, Niggers, Incorporated, *supra* note 26, at 1028, 1038. Concerning the freeway problems in Washington, D.C., Booker stated:

One kills or one is killed, and so therefore, we accept no compromises. We simply say there shall be in this country no more white man's roads coming through no more black men's bedrooms. And if it takes the taking of arms and bearing arms in the defense of liberty for black people and poor people, then the taking up of arms and the defending of one's own right to decide his destiny will be done.

See also, Statement of Sam Abbot, *Hearing on Two Hearings*, 753, 755.

47. See 391 F.2d 478, 479 (D.C. Cir. 1968).

48. J. Hennessee, *A Laymen's Who's Who on the Freeway Donnybrook*, WASHINGTONIAN, Vol. 3, No. 8, May 1968, at 42, 46.

49. See *supra* note 46.

50. See *supra* note 48.

51. *Id.*

majority.”⁵² Even if such a response were not forthcoming and the highway opponents had a significant impact on the ultimate decision, one wonders whether a system can be devised in which those with opposing views may have influence without having to generate such intense conflict.

3. *The Rational Counter Plan*—A more rational approach to influence is that of the counter plan.⁵³ Since highway departments have the time and expertise to develop, in detail, the technical justification for the route they favor, at the required hearing to consider the “economic effects” of a specified alignment, they generally are able to present a detailed plan to support their choice. Even if we accept the assumption that such a plan is but a mere representation of a particular set of values, the presentation of one’s position in terms of the “planner’s language” is a most persuasive, if not fully convincing, device. As in any political advocacy in a democratic society, opposition that can only say “no” in the face of a mass of statistics, maps and data will tend to appear to be mere obstructionists and thereby greatly disadvantaged.^{53.1} By comparison, the rational plan of the highway department not only seems more likely to represent the “public interest,” but tends to neutralize the opposition as well.

Rather than an uncompromising no, the counter plan method challenges highway department facts and figures and realistic alternatives are suggested. Indeed, private planning firms are often hired with the ultimate goal of discrediting the apparent expertise of the highway proponents.⁵⁴

In Washington, D.C., a group called the Committee of 100 played such a role, particularly one of its members.⁵⁵ Peter Craig spent a number of years analyzing various consultant reports prepared for the highway department as well as its own statistics and traffic predictions. Having amassed a private library of raw data, he published his own report entitled “Freeways and Our City” in which he attempted to disprove many of the Highway Department’s theories and assumptions.⁵⁶ Furthermore, at various hearings and meetings, he was

52. Babcock & Bosselman, *Citizen Participation: A Suburban Suggestion for the Central City*, 32 LAW & CONTEMP. PROB. 220, 221 ().

53. Plager & Handler, *The Politics of Planning for Urban Redevelopment: Strategies in the Manipulation of Public Law*, WIS. L. REV. 724, 276 (1966).

53.1. *Id.* at 726-27.

54. See generally, Peattee, *Reflections on Advocacy Planning*, 34 J. AMER. INST. PLANNERS 80 (1968).

55. J. Hennessee, *A Layman’s Who’s Who on the Freeway Donnybrook*, 3 WASHINGTONIAN, 48 (1968).

56. CRAIG, *FREeways AND OUR CITY* (1965).

an articulate spokesman for the opposing view, providing not only criticism, but alternatives.⁵⁷

Like the previous approach, the precise effectiveness of such planning advocacy is difficult to determine. In Washington, it appears this committee was quite successful, particularly when a route from the suburbs was proposed through a Georgetown corridor.⁵⁸ Indeed, not only was this proposal defeated, but Congress imposed a five-year highway building freeze in the northwest area of the city.⁵⁹ To attribute such an impact solely to the rational method would be an oversimplification, for it must be noted that those making such counter arguments represented some of the most economically and politically significant people in the District.⁶⁰ In short, perhaps the advocacy approach can be summed up as follows:

While advocacy itself is a noble profession, it is noble only in its proper surroundings, in a clear adversary procedure, set forth before a tribunal which is able to choose between the opposing arguments by reference to established custom and precedent. The planning decisions that are finally made by the governing bodies of our cities rest on no such foundation. They rest mainly on the economic and political strengths and weaknesses of those who make them.⁶¹

If those challenging the views of the highway departments and their allies are not to depend on court intervention, the generation of intense conflict, or the mere chance existence of an individual expert, or the resources to hire one, they must have a significant voice in the formal decision-making process. It is with this orientation that we now analyze the recent changes in the law.

II.

A. *The Recent Changes*

The 1968 Federal Aid Highway Act⁶² stipulates that, in addition to the economic effects of a route location, the hearing required under

57. See, e.g., Washington Post, Nov. 1961. When a highway through the Wisconsin Avenue corridor of Georgetown was once again suggested, "Craig presented 36 pages of testimony, complete with 24 charts. Among his chief contentions were that in the past 25 years, the amount of city land used for taxable purposes has declined nearly 20 per cent while land for streets and alleys has increased nearly 18 per cent. . . ."

Craig also contended that the city's high plans for 1975 are faulty because they make no provision for development of a rapid transit system by 1975.

58. See Washington Post, Oct. 27, 1961.

59. 74 Stat. 538, § 53.

60. See *supra* note 54.

61. Starr, *Advocates and Adversaries*, Selected Papers From the ASPO National Planning Conference, May 4-9, 1968, at 37.

62. 82 Stat. 815.

Section 128 of Title 23 must now air the "social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as have been promulgated by the community."⁶³ In an attempt to give substance to this amendment and to carry out Congress' intent,⁶⁴ the PPM that followed aimed at increasing effective public participation in the decision-making process and requiring consideration of a wide range of factors in determining highway location and design.

Two hearings are now required—one for corridor location and another, at a later date, for specific design location.⁶⁵ The corridor hearing is held before any route location is approved and before the State Highway Department is committed to any specific proposals.⁶⁶ The purpose of this hearing is to insure a public forum is afforded for effective participation by interested persons in not only determining the general location of the highway, but whether it is needed at all.⁶⁷ With need established and a corridor mapped out, the design hearing is held to afford an opportunity for public participation in determining the specific location and major design features of the highway.⁶⁸ The underlying rationale of both hearings is that by involving the public in the route location process before any definite plans have crystallized, highway departments can be more responsive to their views and the conflict generated in the past would thereby be diminished.

To insure the success of these hearings, the new procedures attempt to cure many of the pre-existing deficiencies. As stated above, Title 23 requires that, in addition to the economic effect, the sociological and environmental impact of the selected route must also be considered. To give substance to these terms and thereby broaden the goals and values highway departments must consider, the new procedures suggest 23 criteria for consideration.⁶⁹ They also clearly

63. 82 Stat. 815, § 24; 23 U.S.C. § 128(a).

64. The revised policy should provide the mechanisms for more timely and effective public hearings. The Committee on Public Works emphasizes the importance of properly publicized and conducted public hearings. It is important that those who participate in the hearings believe that the views they express will be considered and weighed in decisions relating to highway location and design. These hearings are intended to produce more than a public presentation by the highway department of its plans and decisions. In order to emphasize the importance of these hearings and the matters which must be considered in the decision-making process. These additional factors will require greater involvement by other state and local government officials and agencies and by private individuals and groups. S. Rep. No. 1340, 90th Cong., 2nd Sess., 10-11.

65. Bureau of Public Roads, *Policy and Procedure Memorandum 20-8*, Jan. 17, 1969, § 6(a) found in 34 C.F.R. No. 12 at 723.

66. *Id.*

67. *Id.*

68. *Id.* § 6(b).

69. *Id.* § 4(c). These factors are:

(1) Fast, safe and efficient transportation

state the precise mechanics State Highway Departments must employ to adequately provide notice of these hearings.⁷⁰ In addition, they include a detailed step-by-step explanation of how the hearings should be conducted and what material and information must be considered.⁷¹ Furthermore, before approval by the Bureau of Public Roads, the new procedures require extensive review of all pertinent matters related to the manner in which the highway departments held the hearings as well as how they arrive at their decisions in selecting final route locations and designs.⁷² Finally, the new procedures take into consideration the inordinate time lag between hearings and construction and require that new hearings be held if after three years from the date of the initial hearings, the location and/or design approvals have not been requested from the Bureau of Public Roads.⁷³

These changes represent a significant improvement in the law. Indeed, they assure everyone a voice in the planning and location of an interstate highway as well as requiring that many typically urban interests be taken into account. To gauge, however, the true

-
- (2) National defense
 - (3) Economic activity
 - (4) Employment
 - (5) Recreation and parks
 - (6) Fire protection
 - (7) Aesthetics
 - (8) Public utilities
 - (9) Public health and safety
 - (10) Residential and neighborhood character and location
 - (11) Religious institutions and practices
 - (12) Conduct and financing of Government (including effect on local tax base and social service costs)
 - (13) Conservation (including erosion, sedimentation, wildlife and general ecology of the area)
 - (14) Natural and historic landmarks
 - (15) Noise, and air and water pollution
 - (16) Property values
 - (17) Multiple use of space
 - (18) Replacement housing
 - (19) Education (including disruption of school district operations)
 - (20) Displacement of families and businesses
 - (21) Engineering, rights-of-way and construction costs of the project and related facilities
 - (22) Maintenance and operating costs of the project and related facilities
 - (23) Operation and use of existing highway facilities and other transportation facilities during construction and after completion.

This list of effects is not meant to be exclusive, nor does it mean that each effect considered must be given equal weight in making a determination upon a particular highway location or design.

70. Bureau of Public Roads, Policy and Procedure Memorandum 20-8, January 17, 1969, § 8(a).

71. *Id.* § 8(b).

72. *Id.* § 8(c).

73. *Id.* § 8(d).

effectiveness of these procedures our inquiry must be directed to whether or not this voice will be heard and what weight these new factors will be given.

B. Evaluation

1. *Broad criteria*—Ideally, the fact that many typically urban interests must now be considered in the formal decision-making process should dispense with the need for extra-system methods of asserting urban views. In reality, however, it is the highway departments that weigh these factors and they are not neutral arbiters, but parties with a particular point of view. Their job is and has always been to build highways in as efficient a manner as possible. In so doing, they have not adequately represented urban interests in the past and the fact they must now “consider” them is no guarantee they will give them their proper weight. Indeed, in so subjective a process as urban highway planning, unless those with an urban bias play a significant role in weighing these interest, little if any significant change may be expected. With this in mind, we now examine the remaining changes to determine whether or not they represent any significant increase in political leverage to the urban dweller.

2. *The Corridor Hearing*—The corridor hearing exposes to public scrutiny and criticism what was previously an essentially uncontrolled discretionary decision on the part of the highway departments. This may deprive them of a significant political advantage. Highway opponents are brought into the decision-making process at a much earlier stage. They thus have more time to mount effective opposition as well as an additional forum to publicly express their views. However, as in the past, they will have to continue to resort to various community organizational techniques and rational counter proposals. The hearing provides no guarantee their voice will be heard, only an additional opportunity to generate pressure which may or may not be influential.

At the corridor stage, such pressure is difficult to mount. Plans are necessarily vague and uncertain. To create an issue over a proposed highway somewhere in the northwest part of the city is a most difficult process. To challenge, on a rational level, the notion that traffic congestion exists and more highways are needed is also extremely difficult. In short, debate before specific interest are at stake seldom stirs any emotions; nor does it yield to a meaningful exchange of plans and counter plans.

There are, no doubt, exceptions. A proposed corridor in a predominantly Negro neighborhood is now quite likely to trigger a number of militant interest groups. Or, as in Washington, D.C., a

proposed corridor in so wealthy and powerful as well as scenic and historic an area as Georgetown's Wisconsin Avenue did engender substantial opposition.⁷⁴ These examples, however, represent extremes. And, while it is important the additional hearing may aid in stimulating community opposition in such situations, the potential private harm in the great majority of cases is seldom as visible or as dramatic. And yet, even if it were, there is no guarantee that the voices of the opposition would be heard. Highway departments are generally autonomous and can often quite easily "weather the storm." Furthermore, the government officials in control are generally not electorally dependent on those in opposition. In short, the additional hearing adds some additional leverage, but is no guarantee important interests will be consistently represented.

3. *Procedural changes*—The procedural changes previously discussed—including notice, the conduct of the hearing, the material to be considered, the amount of time allowed to elapse—not only rid the process of gross deficiencies, but may increase the likelihood of success in court. The procedure by which highway departments are to make their decisions is now spelled out in clear and precise terms with little room for misunderstanding or misinterpretation. Thus, in upholding a route location decision, the courts can no longer claim, as in *Nashville v. Ellington* that though they considered the way notice was given to be unsatisfactory, "neither the statute nor the regulations of the Bureau of Public Roads prescribed how notice of hearings should be given."⁷⁵ Yet, there is no reason to assume that the proper procedures, now clearly spelled out, will not be followed in the majority of cases. In short, the likelihood of success in the courts will be confined to a small minority of situations.

In summary, while these changes represent a definite improvement, they fail to solve two basic problems: (1) state highway departments are generally unresponsive to urban interests; (2) decision-makers with the power to check them are either sympathetic to their point of view, electorally independent of those in opposition or both. It is with this in mind that we analyze possible alternative decision-making processes.

III

A. *Alternative Approaches*

Assuming we live in an auto-dominated society and, at least in the near future, will continue to do so, some urban roads must be built.⁷⁶

74. See *supra* note 57.

75. See *supra* note 16.

76. See, Gunzburg, *Transportation Problems of the Megalopolitan*, 12 U.C.L.A. L. REV. 800, 804.

The following represent some alternative approaches for determining what interests we want to protect in making route allocations through urban centers.

1. *Vermont approach*—Vermont takes the ultimate decision-making power from the highway department and places it with a judge.⁷⁷ Before the highway department can proceed with its plans it must petition the local superior court for an order of necessity.⁷⁸ The court then conducts a hearing on the necessity of the route allowing any person owning or having an interest in the land to be taken or affected to object. If this occurs, a full trial-type hearing is required. The burden of proof is on the State Highway Department and the State's Engineer may be extensively cross-examined about the efficacy of the proposed and alternative routes. The ultimate decision-making power then rests with the judge. He may not only find necessity or the lack of it, but may "modify or alter the proposed taking in such respect as to the court may seem proper. . . ."⁷⁹

This approach is undesirable for three reasons. First of all, it does not institutionalize a consistently fair consideration of urban values. The judge may or may not be sympathetic to, or even fully aware of the significant urban interests at stake. Indeed, if he is not, the fact he is generally not an elected official may make him totally immune to significant countervailing pressures and interests. Secondly, even though the burden of proof is on the highway department to prove the necessity of the route they favor, it is incumbent on those who protest to suggest alternatives and counter proposals. This is a heavy and expensive burden. Finally, scrutinizing the details of a complex transportation plan is not an appropriate judicial function. This is not to suggest that "planning expertise" is the panacea for the subjective determinations that must be made. But rather, to make even intelligent subjective determinations, a certain amount of knowledge concerning the complex problems involved is necessary. Furthermore, since so many difficult issues and diverse interests are at stake—ranging, for example, from relocation housing to air pollution and from downtown businessmen to neighborhood residents—thorough administrative review, at least in the first instance, seems more appropriate. In short, the idea of reviewing highway department decisions is a good one; the proper forum, however, is not a court.

2. *Administrative appeal*—When initially proposed, the new procedures provided that "any interested person" could appeal the action of the division engineer of the Bureau of Public Roads on a

77. VT. STAT. ANN., tit. 19, § 224.

78. *Id.*

79. *Id.* § 227.

request for approval of a highway location or design to the Federal Highway Administrator.⁸⁰ Such an appeal would stay the action of the division engineer until approval were either granted or denied by the Administrator.⁸¹ Though this proposal was ultimately rejected, the idea of administrative review of highway department decisions is sound. However, the Federal Highway Administrator may be too biased a reviewer; that is to say, his views may be akin to those of highway departments themselves, thereby continuing to exclude consideration of various urban interests. A possible solution for this problem is an inter-agency appeals board composed of representatives from the Departments of the Interior, Housing and Urban Development, Health, Education and Welfare, and Transportation.⁸² Such a board would ensure that the over-all environmental impact of a route would be considered from a number of perspectives, all of which are highly sensitive to the various kinds of problems an urban highway creates. Thus, in weighing sociological and environmental factors as well as economic considerations, one could expect that proper deference would be given to important urban interests.

This solution, however, is not without fault. Because highway programs historically have been state dominated, formally placing the ultimate decision-making power at the Federal level may be politically unrealistic.⁸³ Furthermore, since most of the issues raised are peculiarly local, a Federal review board may often be too far removed to adequately consider many of the most significant problems. Finally, even though, due to the nature of their expertise, these agencies would possess an urban bias, it would still be incumbent on those who protest

80. 33 Fed. Reg. 15666, § 3.17(b) (1969).

81. *Id.* § 3.17(c).

82. Several who testified at the Department of Transportation Hearings, *supra* note 26, on the proposed new regulations suggested such an idea. *See, e.g.*, Statement of Anthony Wayne Smith, National Parks Association, Washington, D.C., at 1118; Statement of Edmund Bacon, Citizens' Advisory Committee on Recreation and National Beauty, at 261.

83. This suggestion evoked substantial protest from many governors, Highway Departments and Highway lobbying groups and was not included in the final version of the new regulations. The statement of Governor Shapiro of Illinois is perhaps most representative of this point of view. In pertinent part, he stated:

Local disputes should be settled by local officials having knowledge of local conditions and local interests and most certainly not by the Federal Highway Administrator. A fundamental premise of the Federal Highway program is embodied in §§ 103 and 105 of Title 23. Those sections make it the prerogative of the States to select the systems and projects which comprise the Federal Aid program. The proposed regulations subvert . . . States' rights by the appeal provisions which give the Federal Highway Administrator the power to take final action on direct appeals from individuals. . . . This method of direct appeal to the Federal Government bypasses State administrative authority and State courts and makes the highway program a federal program rather than a state program requiring federal support.

to present their positions in terms of the "planner's language"; that is to say, to assure success, they would have to bear the expense of developing rational alternatives and counter proposals. These difficulties, however, are not insurmountable. Indeed, the above represents a possible solution worthy of careful consideration.

3. *The Washington approach*—Another approach to checking highway department decisions is a local appeals board.⁸⁴ In Washington, when either the city or town, or county, objects to a highway route location, either governmental unit can call such a board into existence. If this occurs—

The mayor or the county commissioners, as the case may be shall appoint two members of the board, of which one shall be a duly elected official of the city, county or legislative district, except that of the legislative body of the county, city or town requesting the hearing, subject to confirmation by the legislative body of the city or town; the state highway commission shall appoint two members of the board who shall not be members of such commission; and one member shall be selected by the four thus appointed. Such fifth member shall be a licensed civil engineer or a recognized professional city or town planner, who shall be chairman of the board.⁸⁵

If both units object, a nine-man board is established with the mayor choosing two members, the county two, the highway commission four and all eight, the ninth.⁸⁶

This approach has the advantage of not only taking the actual decision-making power from the highway departments, but placing it with a tribunal well aware of the peculiarly local problems and needs of the area. In this sense, it is superior to the federal inter-agency board. The key difficulty, however, has to do with the manner in which the board is created. Those protesting route location decisions are often not only a small part of the electorate, viewed from a city or county-wide perspective, but generally from low income neighborhoods as well.⁸⁷ Thus, it is possible for city or county officials, with relative immunity, and in the interest of securing a free federal project at the expense of the least economically and politically potent groups of their constituency, to refuse to call the board into existence. And, even if it is formed, it is quite possible that members will be appointed whose

84. WASH. REV. CODE ANN., (1962).

85. *Id.*

86. *Id.*

87. See generally, *The Freeway In The City* at 11-15; cf., Statement of R.H. Booker, Chairman, Niggers Inc., DOT's *Hearings on Two Hearings* 1028, 1038.

views are more akin to those of the highway department rather than those whose interests are at stake.

This difficulty, however, is easily remedied. The persons who should have the power to call the board into existence and appoint its members should be the elected officials of the affected districts. Because they are electorally dependent upon those who object to the route location, they are much more sensitive to their demands. Not only would the review board be established in most instances, but neighborhood representatives could be appointed thus providing those with the most at stake a real voice in the decision-making process. Furthermore, the elected representatives themselves should not be barred from sitting on such a board. In many instances, they may be the most articulate and knowledgeable people in the affected area. Finally, stipulating that the fifth or ninth man be a licensed civic engineer or qualified city planner should not be required. While it may be useful to have a person familiar with the technical aspects of the route location, it may too narrowly restrict the pool of arbitrators from which the parties in conflict are able to draw upon. Since choosing essentially the ultimate decision-maker will be the most difficult part of this process, it is wise to leave as much room for compromise as possible.

Yet, what is to be done if, even with this room for compromise, no agreement can be reached concerning the fifth or ninth man. If highway building comes to a halt as long as there is a failure to agree, it is to the advantage of highway opponents to never agree. If a time limit is imposed, it is to the advantage of highway proponents to simply "wait it out." In this respect, the interagency appeals board is superior. The agencies would designate their representatives and at least this part of the conflict would be avoided.

This difficulty, however, may not be insurmountable. Perhaps a time limit coupled with a duty to bargain in good faith could be imposed. That is to say, if it were determined by a court that the highway department was merely "waiting it out," construction would be halted until some agreement were reached and the review board had passed upon the issues. If, on the other hand, the court determined the highway department had bargained in good faith, but the local residents had not, a time limit would be established at the end of which, if agreement had not been reached, construction would begin. Finally, if an honest deadlock existed, the time limit would simply be extended.

Involving the courts in this manner has strong overtones of the Vermont approach, already designated as inappropriate.⁸⁸ Yet, it

88. See text at note 79 *supra*.

differs in the sense that the court is not directly concerned with ultimate planning policy, but simply whether each side has made an honest attempt to choose an appropriate arbitrator. And indeed, though this is a most difficult task to perform, it is the kind of problem traditionally entrusted to the judiciary.

In summary, none of the alternative approaches outlined above are problem-free. Yet, while the Vermont approach may be totally inappropriate, the federal or local appeals boards' approaches offer a hope of institutionalizing the intense conflict urban route location decisions have generated in the past. Due, however, to the fact that the local appeals board would allow residents of the affected area to truly participate in the decision-making process and would be much more aware of many of the peculiar local problems and needs of the area, it seems to be the preferable solution.

B. Design Concept Teams

Another approach to minimize conflict is to improve the highway departments themselves. In this regard, the Urban Design Concept Team may be of assistance.⁸⁹ Basically, such a team consists of a number of experts from various disciplines including architects, sociologists, urban planners, and economists as well as highway engineers and others. Normally, these professionals are broken down into smaller teams. For example, one team may "undertake analysis of the entire transportation system, as a basis for coordination between that system and the planned highway segment."⁹⁰ Another may examine "the broad area through which the corridors pass, determining the qualities, quantities, and values of its social, economic, structural, historical, and open-space characteristics."⁹¹ Such a team would spend much of its time talking with and listening to groups and individuals in the potential corridor. Still another would explore "the opportunities for "joint development" (multiple use of space) above, below, and along the highway presented by the project."⁹² Another would examine the safety and engineering aspects of the highway, and finally one would attempt to monitor the entire process.

This approach has apparently met with some success in such cities as Baltimore, Chicago and Cincinnati.⁹³ Indeed, it brings into the

89. See generally, *Team Concepts for Urban Highways and Urban Designs*, HIGHWAY RESEARCH RECORD, No. 220.

90. Bridwell, Remarks Before Pennsylvania Department of Highways Seminar, February 28, 1968, 220 HIGHWAY RESEARCH RECORD 1, at 3.

91. *Id.*

92. *Id.*

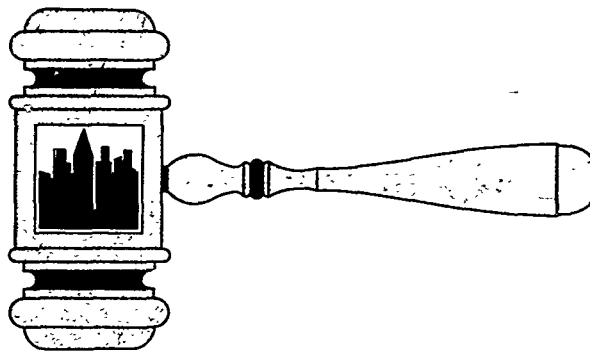
93. See, e.g., Barnett, *Process for Action*, ARCHITECTURAL RECORD, May 1966; *Transport: A Concept Team For Baltimore*, CITY, Nov. 1967, at 15; *Baltimore's Concept Team, Part II*,

planning process various professionals whose expertise in urban problems makes them especially sensitive to urban interests. Yet, though it should be encouraged, it should not be relied upon. In the first place, these teams are normally only advisory. Highway departments may or may not heed their advice. Secondly, particular people may have been chosen for this team simply because they will tell the highway department what it wants to hear. Finally, though the urban experts of the team are sensitive to urban interests, the only true "experts," in this regard, are those whose own interests are at stake. It is their views that must be fully articulated and carefully considered. Thus, it seems most sensible to let them speak for themselves not only at the required hearings, but through a local review board as well.

CONCLUSION

Planning a highway is a subjective process. For too long a time the values and interests of the urban dweller have been effectively excluded from the decision-making process. The result has often been intense conflict and instances of gross unfairness. In attempting to correct this situation, the recent changes in the law represent a step in the right direction. However, they continue to leave the highway departments with final decision-making power. While utilization of a design concept team could make highway departments more responsive to urban interests, such a result is assured if decision-making power is delegated to those most affected by the proposed urban highway.

CITY, January, 1968, Vol. 2, No. 1, at 32; Pekarsky, *Joint Development Concept: Chicago Crosstown Expressway*, 220 HIGHWAY RESEARCH RECORD 17.



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